

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California.	Rulemaking 04-01-025 (Filed January 22, 2004)
In the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) Under Its Experimental Gas Cost Incentive Mechanism and Related Gas Supply Matters. (U 904 G)	Application 00-06-023 (Filed June 15, 2000)
In the Matter of the Application of San Diego Gas and Electric Company (U 902 G) to Modify and Extend Permanent Gas Procurement Performance-Based Ratemaking Mechanism.	Application 02-10-040 (Filed October 31, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING OCTOBER 11, 2005 EMERGENCY PETITION OF
SOUTHERN CALIFORNIA GAS COMPANY AND
SAN DIEGO GAS & ELECTRIC COMPANY**

Summary

Today's ruling confirms the administrative law judge's (ALJ) October 14, 2005 electronic mail notice (e-mail) to the affected service lists regarding certain rulings made in connection with the emergency petition of Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) to modify Decision (D.) 02-06-023 and D.03-07-037 (emergency petition).

The emergency petition and the related motions request Commission authorization regarding an expanded level of gas hedging and certain treatment of the hedging activities. The request is very similar to the same relief that the Commission recently provided to Pacific Gas and Electric Company (PG&E) in D.05-10-015 in order to “provide much-needed supplemental protection from possible dramatic natural gas price increases in the wake of Hurricane Katrina and Rita....” (D.05-10-015, OP 1.)

Background

The emergency petition of SoCalGas and SDG&E requests that D.02-06-023 and D.03-07-037 be modified. D.02-06-023 addressed the current version of SoCalGas’ Gas Cost Incentive Mechanism (GCIM), and D.03-07-037 addressed the current version of SDG&E’s Gas Procurement Performance Based Ratemaking (PBR) Mechanism. The emergency petition seeks authority to “allow SoCalGas and SDG&E to undertake, outside of and in addition to the GCIM and Gas Procurement PBR Mechanism, an expanded level of hedging of their natural gas purchases on behalf of their respective core gas customers.” (Emergency Petition, p. 1.)

The emergency petition of SoCalGas and SDG&E is similar to the petition for modification of D.04-01-047 that was filed by PG&E on September 13, 2005, and which was approved by the Commission in D.05-10-015.

Two motions related to the petition for modification were also filed by SoCalGas and SDG&E on October 11, 2005. The first motion requests that Addendum A and Addendum B of the emergency petition be filed under seal. The second motion requests that the September 17, 2005 protective order that was issued in connection with PG&E’s petition for modification of D.04-01-047 be modified to include Addendum A and Addendum B of the emergency petition.

The e-mail of October 14, 2005, was sent to the affected service lists in R.04-01-025, A.00-06-023, and A.02-10-040. The e-mail informed the parties “that the request of SDG&E and SoCalGas for expedited consideration of the hedging petition, the related emergency motion to file under seal, and the related motion for an order modifying the protective order issued in connection with PG&E’s hedging petition, are granted.” The e-mail also informed the parties that a ruling confirming the rulings made in the e-mail would issue during the week of October 17, 2005.

Confirmation of Rulings Made in the E-Mail

SoCalGas and SDG&E seek expedited action on the emergency petition. In particular, they request that the time be shortened for the filing of responses to the emergency petition and the filing of reply comments, and that a Commission decision on the emergency petition be acted upon at the Commission meeting of October 27, 2005.

The e-mail granted the request for expedited consideration of the emergency petition. Today’s ruling confirms the ruling made in that e-mail. Any interested party who wants to respond to the October 11, 2005 emergency petition of SoCalGas and SDG&E shall file a response with the Commission’s Docket Office no later than Wednesday, October 19, 2005. Any interested party who wants to reply to any response that may be filed shall file the reply no later than Monday, October 24, 2005. Anyone filing a response or a reply to a response shall also electronically serve the document on the three service lists referenced above, and a paper copy of the document shall be delivered to the undersigned in a timely manner. (See Rules 2.3 and 2.3.1.) A draft decision regarding the emergency petition will be prepared for the Commission’s consideration at the October 27, 2005 meeting.

In conjunction with the emergency petition, SoCalGas and SDG&E filed an emergency motion “for authority to file and maintain confidential, commercially sensitive, proprietary information under seal and request for expedited treatment.” The emergency motion requests that Addendums A and B to the emergency petition be filed under seal. Addendum A and Addendum B describe the emergency core gas hedging plans of SoCalGas and SDG&E, respectively. The e-mail granted the request to file the addendums under seal.

Since SoCalGas and SDG&E are major purchasers of natural gas, confidential treatment of Addendums A and B is needed in order to protect the utilities’ hedging plans from being disclosed to other participants in the natural gas market. Disclosure of the hedging plans could result in higher market prices for the hedging instruments that the utilities seek for their core customers.

SoCalGas and SDG&E plan to, or have shared, the proposed hedging plans with the Commission’s Office of Ratepayer Advocates and with The Utility Reform Network, and with other qualifying consumer or customer groups.

Today’s ruling confirms the e-mail ruling that Addendums A and B of the emergency petition shall be filed under seal.

The second motion that SoCalGas and SDG&E filed in conjunction with its emergency petition is a motion to modify the September 17, 2005 protective order that applies to PG&E’s emergency core gas hedging plan. SoCalGas and SDG&E request that the PG&E protective order be modified to cover the emergency core gas hedging plans of SoCalGas and SDG&E. SoCalGas and SDG&E attached a redlined and a proposed “clean” version of the modified protective order to the motion. The e-mail granted the motion of SoCalGas and SDG&E, and stated that the September 17, 2005 “protective order shall either be

modified or a separate protective order pertaining to SoCalGas/SDG&E's emergency core gas hedging plans will be issued."

Today's ruling confirms the e-mail ruling granting the motion to modify the September 17, 2005 protective order so that it applies to the emergency core gas hedging plans of SoCalGas and SDG&E as well. Instead of modifying the September 17, 2005 protective order to include SoCalGas and SDG&E, it is administratively more efficient to issue a separate protective order that applies to SoCalGas and SDG&E. Accordingly, Attachment A of this ruling is the protective order that shall govern access to and the use of the emergency core gas hedging plans of SoCalGas and SDG&E.

Therefore, **IT IS RULED** that:

1. The rulings made in the electronic mail notice that was sent out on October 14, 2005 to the affected service lists are confirmed as set forth below.
2. The request of Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) for expedited treatment, contained in their October 11, 2005 emergency petition to modify Decision (D.) 02-06-023 and D.03-07-037 (emergency petition), is granted as follows:
 - a. Any interested party who wants to respond to the October 11, 2005 emergency petition shall file a response with the Commission's Docket Office no later than Wednesday, October 19, 2005.
 - b. Any interested party who wants to reply to any response that may be filed shall file the reply with the Docket Office no later than Monday, October 24, 2005.
 - c. Anyone filing a response or a reply to a response shall electronically serve the document on the three service lists referenced in the caption of this ruling, and a paper copy of the

document shall be delivered to the assigned administrative law judge in a timely manner.

d. A draft decision regarding the emergency petition will be prepared for the Commission's consideration at the October 27, 2005 meeting.

3. The October 11, 2005 emergency motion of SoCalGas and SDG&E to file Addendums A and B of the emergency petition under seal is granted, and access to, and the use of those addendums, shall be governed by the protective order appended to this ruling as Attachment A.

4. The October 11, 2005 motion of SoCalGas and SDG&E to modify the September 17, 2005 protective order to include protection to the emergency core gas hedging plans of SoCalGas and SDG&E is granted, and Attachment A of this ruling shall be the protective order that applies to those two hedging plans.

Dated October 18, 2005, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California.	Rulemaking 04-01-025 (Filed January 22, 2004)
In the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) Under Its Experimental Gas Cost Incentive Mechanism and Related Gas Supply Matters. (U 904 G)	Application 00-06-023 (Filed June 15, 2000)
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PROTECTIVE ORDER

1. **Scope.** This Protective Order shall govern access to and the use of all Protected Materials in this proceeding as hereinafter defined. This Protective Order does not address the right of employees of the Commission acting in their official capacities to view Protected Materials, because Commission employees are entitled to view such Protected Materials in accordance with the requirements of Section 583 of the Public Utilities Code and the Commission's General Order 66-C.

2. **Modification.** Notwithstanding any order terminating this docket, this Protective Order shall remain in effect until, after notice and an opportunity to be heard, it is specifically modified or terminated by the Assigned Commissioner, the Assigned Administrative Law Judge ("Assigned ALJ"), the Law and Motion Administrative Law Judge ("Law and Motion ALJ") or the California Public Utilities Commission ("CPUC" or "Commission"). The parties agree that

modifications to this Protective Order may become necessary, and they further agree to work cooperatively with the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner or the full Commission, as the case may be, to devise and implement such modifications in as timely a manner as possible.

3. **Definitions.**

(a) The term “Protected Material(s)” means: (i) the “Emergency Hedging Plans,” which Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) filed with the Commission under seal on October 11, 2005, as Addendums (the “Addendums”) in support of their concurrently filed Emergency Petition for Modification of Decision No. 02-06-023 and Decision No. 03-07-037, and Request for Expedited Treatment; and (ii) any responses to data requests that call for production of information contained in or discussed by the Addendums; and (iii) any other materials that are made subject to this Protective Order by any Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, the Commission, or any court or other body having appropriate authority. Protected Materials also includes memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, or compiles the Protected Materials or from which such materials may be derived. Protected Materials do not include: (i) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order or any other protective order.

(b) The term “Market Participating Party” (“MPP”) refers to a party that is: (i) a person or entity that engages in the purchase, sale or marketing of electrical energy, electrical capacity or electrical financial derivatives, or natural gas or natural gas financial derivatives, or

the bidding on or purchasing of power plants, or consulting on such matters; or (ii) a trade association or other organization composed of or representing persons or entities that engage in one or more of such activities.

(c) The term “Non-Market Participating Party,” or “NMPP,” refers to any consumer or customer group that SoCalGas or SDG&E, and the Director of the Commission’s Energy Division or his or her designee (“Division Director”) agree have a bona fide interest in participating on behalf of core natural gas customers in this proceeding, and which group is not an MPP.

(d) The term “NMPP Reviewing Representative” refers to a person an NMPP selects pursuant to Paragraph 5 hereof who is an employee of the NMPP or an attorney or an expert the NMPP retains for the purpose of preparing for, participating in, or giving advice concerning this proceeding.

4. **Designation of Materials.** All documents containing Protected Materials that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order. Such documents shall be marked with the words “**PROTECTED MATERIALS**” or other, similar terms, and shall be served upon all NMPP Reviewing Representatives. Service upon the persons specified in the foregoing sentence may either be (a) by electronic mail, (b) by facsimile, or (c) by overnight mail or messenger service. In the event SoCalGas or SDG&E chooses to serve the foregoing persons entitled to see Protected Materials by overnight mail or messenger service, that utility shall give all parties 24 hours’ electronic notice of its intention to do so. Any affected party who objects on account of delay to being served with the document(s) at issue by overnight mail or messenger service shall promptly notify the serving party of such objection, and in such a case that utility shall arrange to have the document(s) containing the Protected Material delivered by hand or electronically on

the date service is due to the party so objecting. Whenever service of a document containing Protected Material is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by hand on the date that service is due.

All Protected Materials filed with judicial or administrative bodies other than the Commission, whether in support of or as part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials that are subject to this Protective Order.

5. **Selection of Reviewing Representatives.** Each NMPP shall be entitled to select employees, attorneys, and experts to serve as its NMPP Reviewing Representatives. Each party selecting an NMPP shall first identify its proposed Reviewing Representative to all other parties and the Division Director and shall provide all parties with a curriculum vitae of each candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. Any party who objects to a proposed Reviewing Representative shall advise the proposing party in writing within five (5) business days from receipt of such notice, setting forth in detail the reasons therefor. In the event of such objection, the proposing party, the objecting party or parties, and the Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the Assigned ALJ or the Law and Motion ALJ. In ruling on the motion, the Assigned ALJ or the Law and Motion ALJ shall consider all relevant facts, including whether the proposed Reviewing Representative has a need to know the information in the Protected Materials to prove or defend against a material element of one or more issues presented in this proceeding, and whether it is reasonable to conclude that the information sought by the Reviewing Representative is essential to a fair resolution of an issue in this proceeding.

In the event that an NMPP Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in this proceeding or is employed or retained for a position whose employer is not qualified to be an NMPP, then access to Protected Materials by that person shall be terminated. Even if no longer engaged as an NMPP Reviewing Representative, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

6. **Access to Protected Materials and Use of Protected Materials.** Access of NMPP Reviewing Representatives to Protected Materials shall be granted only pursuant to the terms of this Protective Order. Participants in this proceeding who are designated as MPPs shall not be granted access to Protected Material, but shall instead be limited to reviewing redacted versions of documents that contain Protected Material.

7. **Non-Disclosure Certificates.** No NMPP Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Protected Materials pursuant to this Protective Order unless such NMPP Reviewing Representative has first executed a Non-Disclosure Certificate and delivered it to the relevant utility. SoCalGas and SDG&E shall provide copies of executed Non-Disclosure Certificates to Commission Staff. Attorneys qualified as NMPP Reviewing Representatives shall ensure that persons under their supervision or control comply with this Protective Order.

8. **Maintaining Confidentiality of Protected Materials.** Protected Materials shall be treated as confidential by each NMPP Reviewing Representative in accordance with this Protective Order and the Non-Disclosure Certificate executed pursuant to Paragraph 7 hereof. Protected Materials shall not intentionally be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except other NMPP Reviewing Representatives who are engaged in this proceeding and need to know the information in order to carry out their responsibilities. In the event that an NMPP is requested or

required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any confidential information, the NMPP agrees to oppose disclosure on the grounds that the requested information has already been designated by the Commission as Protected Materials subject to this Protective Order lawfully issued by the Commission and therefore may not be disclosed. The NMPP shall also immediately inform the affected utility of the request, and the utility may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the NMPP shall cooperate with the utility to the maximum extent practicable to either oppose the disclosure of the Protected Materials consistent with applicable law, or obtain confidential treatment of Protected Materials by the entity that wishes to receive the Protected Materials prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where the NMPP has been ordered to produce certain specific Protected Materials, the NMPP may, upon request for substantially similar Protected Materials by a similarly situated party, respond in a manner consistent with that order to those substantially similar requests for those Protected Materials.

9. **Return or Destruction of Protected Materials.** Within thirty (30) days after Reviewing Representative completes or terminates his or her services in this proceeding or within thirty (30) days after the issuance of a Commission order or decision regarding the Emergency Petition of the utility providing the Protected Materials in question, whichever occurs first, each NMPP Reviewing Representative shall, at his or her option, return to the relevant utility or destroy the Protected Materials obtained, produced or maintained pursuant to this Protective Order. Within the same 30-day time period, the NMPP Reviewing Representative shall also submit to the relevant utility and Commission Staff an affidavit stating that, to the best of the NMPP Reviewing Representative's knowledge, as applicable, all Protected Materials subject to the request have been returned or destroyed. To the extent Protected Materials are not

returned or destroyed pursuant to this paragraph for any reason, they shall remain subject to this Protective Order, Section 583 of the California Public Utilities Code and CPUC General Order No. 66-C.

10. **PRA Requests.** If a request is made pursuant to the Public Records Act (PRA), Government Code §6250, *et seq.*, that the Protected Materials filed with or otherwise in the possession of the CPUC be produced, the CPUC will notify the relevant utility of the PRA request and will notify the requester that the Protected Materials are public records that fall within the exclusions listed in Section 2 of General Order No. 66(c), and/or that there is a public interest served by withholding the records. *See* paragraphs 2.2 and 3.3 of General Order No. 66-C. In the event the CPUC receives a request from a federal government agency or via a judicial subpoena for the production of Protected Materials in the CPUC's possession, the CPUC will also notify the relevant utility of such request. In the event that a PRA requester brings suit to compel disclosure of Protected Materials, the CPUC will promptly notify the relevant utility of such suit, and Commission Staff and the affected utility shall cooperate in opposing the suit.

11. **Derivative Materials.** It shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs Protected Material in a manner that could reveal all or a part of the Protected Material, or (ii) any model that relies upon Protected Material for algorithms or other computation(s) critical to the functioning of the model, shall also be considered Protected Material that is subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this Protective Order. However, models that merely use Protected Material as inputs will not themselves be considered Protective Material. It shall also be a rebuttable presumption that where the inputs to studies or models include Protected Material, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Protected Material, such inputs and/or outputs shall be considered Protected Material subject to this Protective Order, unless such inputs and/or outputs have been redacted or

aggregated to the satisfaction of the party producing the Protected Material. Unless a party, by means of notice and motion, obtains a ruling from the Assigned ALJ or the Law and Motion ALJ holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any party who devises or propounds a model or study that incorporates, uses or is based upon Protected Material shall label the model or study “Protected Material,” and it shall be subject to the terms of this Protective Order.

12. **Dispute Resolution.** All disputes arising under this Protective Order shall be presented for resolution to the Assigned ALJ or the Law and Motion ALJ. Prior to presenting any such dispute to the applicable ALJ, the parties to the dispute shall use their best efforts to resolve it. Neither SoCalGas, SDG&E nor the Commission Staff waives their right to seek additional administrative or judicial remedies after the Assigned ALJ or the Law and Motion ALJ has made a ruling regarding the dispute.

13. **Other Objections to Use or Disclosure.** Nothing in this Protective Order shall be construed as limiting the right of SoCalGas, SDG&E, Commission Staff or an NMPP from objecting to the use of Protected Material on any legal ground, such as relevance or privilege.

14. **Remedies.** Neither SoCalGas, SDG&E nor the Commission Staff waives their right to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Protected Materials.

15. **Withdrawal of Designation.** SoCalGas, SDG&E and Commission Staff may agree at any time to remove the “Protected Material” designation from any of their own material if, in their mutual opinion, its confidentiality is no longer required. In such a case, the relevant utility will notify all parties that the utility believes are in possession of such materials of the change of designation.

16. **Interpretation.** Titles are for convenience only and may not be used to restrict the scope of this Protective Order.

Dated October 18, 2005, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong

Administrative Law Judge

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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NON-DISCLOSURE CERTIFICATE

I, _____, have been asked by _____ to inspect certain materials that have been designated as “Protected Materials” under Paragraph 3(a) of the Protective Order entered in the above-captioned matter by the Administrative Law Judge Wong by order dated October 18, 2005.

1. I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with the Protective Order.

2. I hereby certify that I am not an employed by or affiliated with any “Market Participating Party,” as that term is defined in the Protective Order.

3. I understand that my review of Protected Materials is solely for the purpose of participating in the above-captioned matter, and that any disclosure or other intentional use of such materials by me is a violation of the Protective Order.

4. I hereby agree to submit to the jurisdiction of the California Public Utilities Commission ("CPUC") for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the order.

5. I acknowledge that any violation of the Protective Order shall constitute a violation of an order of the CPUC and that the parties to this proceeding and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

Dated:_____

BY: _____

TITLE: _____

REPRESENTING

(END OF ATTACHMENT A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding October 11, 2005 Emergency Petition of Southern California Gas Company and San Diego Gas & Electric Company on all parties of record in this proceeding or their attorneys of record.

Dated October 18, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.